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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,969	09/26/2003	Keith Homer Baker	7836XC2	7274

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EXAMINER	
TSOY, ELENA	
ART UNIT	**PAPER NUMBER**
1762	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/671,969	BAKER ET AL.	
	Examiner	Art Unit	
	Elena Tsoy	1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *76-118* is/are pending in the application.

4a) Of the above claim(s) *77-82 and 94-118* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *76 and 83-93* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/26/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Election/Restrictions

Applicant's election of Group I, claims 76, 83-89, and 93 (species (ii) of cleaning composition) in the reply filed on November 28, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election *without* traverse (MPEP § 818.03(a)).

Claims 76-118 are pending in the application. Claims 77-82, 94-118 are withdrawn from consideration as directed to a non-elected invention.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 76, 83-86, and 89-93 are rejected on the ground of nonstatutory double patenting over claims 1, 2, 9-13 of U. S. Patent No. 6,866,888 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, but claims of the application are broader in scope than those of the patent.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

3. Claims 87-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 9-13 of U. S. Patent No. 6,866,888 in view of Watanabe (JP 10276961). Although the conflicting claims are not identical, they are not patentably distinct from each other because applying a cleaning composition in a form of a gel to shoes by brush is a technique known in the art, as evidenced by Watanabe (See Abstract).

4. Claims 76, 83-93 are provisionally rejected on the ground of nonstatutory double patenting over claims 13, 15-16, 21, 23 of copending Application No. 10/862,706. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, but claims of the current application are broader in scope than those of the referenced copending application.

As to claims 87-88, applying a cleaning composition in a form of a gel to shoes by brush is a technique known in the art.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

5. Claims 76, 83-93 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-3, 5-6, 12, 14, 18, 22-23, 25-29 of copending Application No. 10/862,707. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, but claims of the current application are broader in scope than those of the referenced copending application.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 76, 83-84, 89, 93 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishikawa et al (US 5306435).

Ishikawa et al disclose a method for treating shoes (See column 12, line 36) made from leather, fur and fibrous material with a composition (See Abstract). Leather, fur and woven, knit and unwoven fabrics made of natural fibers such as animal hair, wool, silk, cotton and the like or their mixed fabrics with synthetic fibers treated with the treating composition can be washed in water and retain flexibility, and an excellent dimensional stability (See column 12, lines 5-17). The treating composition comprises surfactants (See column 7, lines 21-68), microbicide, perfume, pH regulator, whitening agent (claimed benefit agents) (See column 8, lines 3-6).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 76, 83-87, 89-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartshorn (WO 9532268) in view of Murch et al (US 5749924).

The Examiner Note: for convenience, instead of WO 9532268, the Examiner will refer to US 5837670 of the same patent family.

Hartshorn discloses a cleaning composition for pre-treating stained *fabrics* or laundry machine washing (See column 9, lines 10-23) comprising surfactants (See column 8, lines 29-67), disinfecting agents (i.e. disinfecting benefit agents) such as peroxygen bleaches (See column 10, line 50) or photodisinfectants (See column 11, lines 17-18) in an amount of 1-30 wt % of the cleaning composition (See column 10, lines 37-43); builders (i.e. benefit agents) for controlling

mineral hardness (See column 11, lines 60-64) such as polyphosphates (See column 12, line 8) or aluminosilicates (See column 12, lines 45-68) in an amount of 5-80 wt % of the cleaning composition (See column 12, lines 1-6), brightening agent in an amount of 0.05-1.2 wt % of the cleaning composition (See column 22, lines 22-26), and soil release agents in an amount of 0.01-10 wt % of the cleaning composition (See column 16, lines 24-31). Obviously, pre-treated *fabrics* may be machine washed.

Hartshorn does not expressly teach that the cleaning composition may be used for treating shoes (Claim 76).

Murch et al '924 teach that contaminated *fabrics,* e.g., clothing, shoes can be treated with a detergent composition totally, or by spot treatment, then the composition can be removed, e.g., by rinsing/washing, absorbency, and/or mechanical force (See column 11, lines 49-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a detergent composition for pre-treating stained *fabrics* in Hartshorn in *any* form including shoes since Murch et al teach that contaminated fabrics in any form, e.g., clothing, shoes can be treated with the same detergent composition.

As to claim 86, Hartshorn teaches that it is well known in the art to formulate a detergent composition as gel (See column 7, line 7).

It is the Examiner's position that the treating composition of Hartshorn comprising disinfecting agents (i.e. disinfecting benefit agents) such as peroxygen bleaches or photodisinfectants in an amount of 1-30 wt % of the cleaning composition and builders for controlling mineral hardness in an amount of 5-80 wt % of the detergent composition, and a brightening agent in an amount of 0.05-1.2 wt % of the cleaning composition would provide claimed benefits (i.e. any damage as a result of washing the one or more shoes with or in an

aqueous medium containing the treating composition is reduced compared to washing the one or more shoes with or in an aqueous medium free of the treating composition) since Applicants' specification discloses that **benefit** agents (See P121, P141, P383 of published application) include disinfecting agents (See P391 of published application) such as peroxygen bleaches (See P391 of published application) or photodisinfectants (See P395 of published application) in an amount of 1-2 wt % or *greater* (See P392 of published application), mineral hardness controlling builders such as polyphosphates (See P144 of published application) or aluminosilicates (See P149 of published application) in an amount of 5-80 wt % of cleaning composition (See P143 of published application) and a brightening agent in an amount of 0.05-1.2 wt % of the cleaning composition (See P477 of published application), and soil release agents in an amount of 0.01-10 wt % of the cleaning composition (See P400 of published application).

As to claims 90-92, it is well known in the art that articles made of delicate fabric should be washed in a flexible bag toprevent damage to the fabric.

10. Claims 76, 83-87, 90-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murch et al (US H1513) in view of Murch et al '924.

Murch et al '513 disclose a method for removing soils and stains from fabrics (See column 1, lines 10-13) comprising contacting fabric with a laundry detergent composition with agitation (See column 2, lines 63-67). The detergent composition comprises surfactants (See column 4, lines 54-66), builders in an amount of 5-80 wt % of the composition (See column 7, lines 15-30) such as polyphosphates (See column 7, line 33) or aluminosilicates (See column 8, lines 5-15), disinfecting agents (i.e. disinfecting benefit agents) such as peroxygen bleaches (See column 12, line 55) in an amount of 1-30 wt % of the cleaning composition (See column 12, lines 26-30), and

soil release agents in an amount of 0.01-10 wt % of the cleaning composition (See column 16, lines 50-53).

Murch et al '513 do not expressly teach that the cleaning composition may be used for treating shoes (Claim 76).

Murch et al '924 are applied here for the same reasons as above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a detergent composition for pre-treating stained *fabrics* in Murch et al '513 in *any* form including shoes since Murch et al '924 teach that contaminated fabrics in any form, e.g., clothing, shoes can be treated with the same detergent composition.

It is the Examiner's position that the treating composition of Murch et al '513 would provide claimed benefits (i.e. any damage as a result of washing the one or more shoes with or in an aqueous medium containing the treating composition is reduced compared to washing the one or more shoes with or in an aqueous medium free of the treating composition) for the reasons discussed above.

As to claim 86, it is well known in the art that a detergent composition can be formulated as gel.

As to claims 90-92, it is well known in the art that articles made of delicate fabric should be washed in flexible bag to prevent damage to the fabric.

11. Claims 85-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al in view of Hartshorn.

Ishikawa et al are applied here for the same reasons as above. Ishikawa et al fail to teach that a cleaning composition is applied in the wash cycle of a washing machine (Claim 85) or is in the form of gel (Claim 86).

As to claim 85, Hartshorn teaches that a cleaning composition can be formulated for pre-treating stained *fabrics* or laundry machine washing (See column 9, lines 10-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated a cleaning composition of Ishikawa et al for laundry machine washing with the expectation of providing the desired benefits since Hartshorn teaches that a cleaning composition can be formulated for pre-treating stained *fabrics* or laundry machine washing.

As to claim 86, Hartshorn teaches that it is well known in the art to formulate a detergent composition as gel.

12. Claims 86-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al/Hartshorn in view of Murch et al '924/Murch et al '513 in view of Murch et al '924/, further in view of Watanabe (JP 10276961).

The cited prior art fails to teach that a cleaning composition is in the form of gel (Claim 86) and is applied to shoes by brush (Claims 87-88) before washing (Claim 89).

Watanabe teaches that a detergent may be formulated as gel and applied by a brush or made into water microparticles and pressurized to be sprayed to a shoe for washing (See Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated a cleaning composition of the cited prior art as gel and applied to shoes by brush before washing, as taught by Watanabe.

13. Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murch et al '513 in view of Murch et al '924, further in view of Hartshorn.

Murch et al '513 in view of Murch et al '924 fail to teach that a cleaning composition is applied to shoes prior to washing. Hartshorn teaches that a cleaning composition can be

formulated for pre-treating stained *fabrics* or laundry machine washing (See column 9, lines 10-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated a cleaning composition in Murch et al '513 in view of Murch et al '924 for pre-treating stained shoes with the expectation of providing the desired benefits since Hartshorn teaches that a cleaning composition can be formulated for pre-treating stained *fabrics* or laundry machine washing.

14. Claims 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al.

Ishikawa et al are applied here for the same reasons as above. Ishikawa et al fail to teach that shoes are placed into a flexible bag. However, it is well known in the art that articles made of delicate fabric should be washed in a flexible bag to prevent damage to the fabric.

15. Claims 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al/Hartshorn in view of Murch et al '924/Murch et al '513 in view of Murch et al '924/, further in view of Yoshioka (JP 09271597).

The cited prior art fails to teach that shoes are placed into a flexible bag. However, Yoshioka teaches that shoes can be washed in flexible bags to prevent damage to shoes (See Abstract).

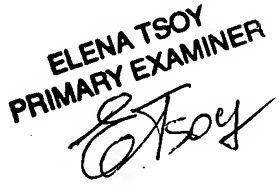
It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed shoes in flexible bags before washing in cited prior art with the expectation of preventing damage to shoes, as taught by Yoshioka.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-142323. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elena Tsoy
Primary Examiner
Art Unit 1762

January 3, 2007